

# **Disposal of Unneeded Federal Buildings: Legislative Proposals in the 112<sup>th</sup> Congress**

June 24, 2011

**Congressional Research Service**

<https://crsreports.congress.gov>

R41892

## Summary

Federal executive branch agencies hold an extensive real property portfolio that includes 429,000 buildings. These assets have been acquired over a period of decades to help agencies fulfill their diverse missions. Agencies hold buildings with a range of uses, including offices, health clinics, warehouses, and laboratories. As agencies' missions change over time, so, too, do their real property needs, thereby rendering some assets less useful or unneeded altogether. Healthcare provided by the Department of Veterans Affairs (VA), for example, has shifted in recent decades from predominately hospital-based inpatient care to a greater reliance on clinics and outpatient care, with a resulting change in space needs. Similarly, the Department of Defense (DOD) reduced its force structure by 36% after the cold war ended, and has engaged in several rounds of base realignments and installation closures.

Real property disposition is the process by which federal agencies identify and then transfer, donate, or sell real property they no longer need. Disposition is an important asset management function because the costs of maintaining unneeded properties can be substantial, consuming financial resources that might be applied to pressing real property needs, such as repairing existing facilities, or towards other pressing policy issues, such as reducing the national debt.

In FY2009—the most recent data available—the government held 10,327 unneeded buildings and spent \$134 million dollars to maintain them. Agencies have said that their disposal efforts are often hampered by legal and budgetary disincentives, and competing stakeholder interests. In addition, Congress is limited in its capacity to conduct oversight of the disposal process because it lacks access to reliable, comprehensive, real property data. The government's inability to efficiently dispose of its unneeded property is a major reason that federal real property management has been identified by the Government Accountability Office (GAO) as a “high-risk” area since 2003.

This report begins with an explanation of the real property disposal process, and then discusses some of the factors that have made disposition relatively inefficient and costly. It then examines three bills introduced in the 112<sup>th</sup> Congress that would address those problems: the Federal Real Property Disposal Enhancement Act (H.R. 1205), the Excess Federal Building and Property Disposal Act (H.R. 665), and the Civilian Property Realignment Act (H.R. 1734). This report concludes with a discussion of policy options for enhancing both the disposal process and congressional oversight of it.

## Contents

Overview of the Disposition Process .....	1
Federal Transfer .....	1
Public Benefit Conveyance .....	2
Conveyance for Homeless Use .....	2
Conveyance for Other Public Benefits.....	2
Negotiated Sale .....	3
Public Sale.....	3
Obstacles to Timely Disposition.....	3
Statutory Disposal Requirements .....	4
Disposal Costs .....	4
Stakeholder Conflict.....	5
Availability and Quality of Real Property Data .....	5
Select Real Property Proposals in the 112 <sup>th</sup> Congress .....	7
H.R. 1205: Federal Real Property Disposal Enhancement Act .....	7
H.R. 665: Excess Federal Building and Property Disposal Act .....	8
H.R. 1734: Civilian Property Realignment Act.....	9
Comparison of Certain Provisions .....	10
Enhanced Use Leases .....	12

## Tables

Table 1. How Select Legislative Proposals Address Obstacles to Timely Disposition .....	10
---	----

## Contacts

Author Information.....	13
-------------------------	----

## Overview of the Disposition Process

The Federal Real Property and Administrative Services Act of 1949 (Property Act) applies to real property held by most federal agencies.<sup>1</sup> The Property Act authorizes the General Services Administration (GSA) to dispose of real property that agencies no longer need, although some agencies have been granted the authority to dispose of their own property.<sup>2</sup> Agencies without independent disposal authority generally follow the process described in this section.

### Federal Transfer

In order to identify properties that agencies no longer need, each agency is required to conduct an annual survey of its real property holdings. Properties that are no longer needed are reported to GSA as “excess.”<sup>3</sup> GSA then physically inspects each excess property, and hires a licensed appraiser to evaluate its fair market value.<sup>4</sup> Next, GSA sends a written Notice of Availability describing the property to other federal agencies, and posts information about the property on its Property Disposal Resource Center website.<sup>5</sup> Agencies may also identify unneeded assets available for transfer through the Federal Real Property Profile (FRPP), a database of the buildings, structures, and land held by federal agencies.<sup>6</sup> If an agency wants to acquire an excess property, it must respond to the Notice of Availability within 30 days, and then submit a formal request for the property to be transferred within 60 days from the date the notice expires.

---

<sup>1</sup> 40 U.S.C. § 101 et. seq. Land reserved for national forest or national park purposes, and Bureau of Land Management properties, are not covered by these disposal rules. Other legislation that governs federal agency real property disposal includes the National Historic Preservation Act (16 U.S.C. § 470 et. seq.), which establishes guidelines for agency disposition of historic properties, and the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. § 11411), which requires agencies to make surplus real property available first for homeless use before making it available for other purposes. In addition, Executive Order 13327, signed in 2004 by President George W. Bush, established (1) Senior Real Property Officers (SRPOs) at 24 of the largest landholding agencies to monitor and manage their agencies’ real property; (2) a Federal Real Property Council, comprised of SRPOs, to evaluate agency real property policies and practices; and (3) the Federal Real Property Profile, a database with information on agency real property holdings, including disposition data, to be managed by the GSA Administrator.

<sup>2</sup> The Department of Defense has the authority to dispose of unneeded real property that is subject to the Base Realignment and Closure (BRAC) process, but GSA disposes of non-BRAC real property. The United States Postal Service has the authority to dispose of all of its real property. The Departments of State, Veterans Affairs, Education, Health and Human Services, the Interior, and Agriculture also have the authority to dispose of some unneeded real property, although the scope of that authority varies widely.

<sup>3</sup> 40 U.S.C. § 102.

<sup>4</sup> U.S. General Services Administration, *Customer Guide to Real Property Disposal*, p. 17, at [http://www.missionumatilla.com/documents/historical\\_data/HD0013\\_PropertyDisposalClosureGuide\\_GSA.pdf](http://www.missionumatilla.com/documents/historical_data/HD0013_PropertyDisposalClosureGuide_GSA.pdf).

<sup>5</sup> The Office of Real Property Utilization and Disposal website address is <https://extportal.pbs.gsa.gov/ResourceCenter/viewproperties.do?noticetype=1>.

<sup>6</sup> Only the 24 federal agencies that are subject to the Chief Financial Officers Act are required to report their real property data annually to the FRPP, although other agencies have the option of reporting. The agencies that are required to report are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs; Environmental Protection Agency; General Services Administration; National Aeronautics and Space Administration; National Science Foundation; Nuclear Regulatory Commission; Office of Personnel Management; Small Business Administration; Social Security Administration; and United States Agency for International Development.

Agencies are required to pay fair market value to acquire excess property, although there are a number of circumstances under which an exception to this requirement may be approved.<sup>7</sup>

## **Public Benefit Conveyance**

If no federal agency wants an unneeded property, then it is declared “surplus,” and it is made available to state and local governments, and non-profits.<sup>8</sup> These entities may have surplus property transferred to them for a discount of up to 100% of fair market value, provided they use the property for a public benefit.<sup>9</sup> This type of transfer is called a public benefit conveyance.

## **Conveyance for Homeless Use**

Pursuant to Title V of the McKinney-Vento Homeless Assistance Act, surplus properties must be made available for serving the homeless before being made available for other public benefit uses.<sup>10</sup> The Department of Housing and Urban Development (HUD) is responsible for reviewing surplus property to determine if it is suitable for homeless use. If a property is determined to be unsuitable for homeless use, then it becomes available for other public uses at that time. If HUD determines a surplus property is suitable, however, it publishes a notice to that effect in the *Federal Register*. State and local governments, and non-profits, are given 60 days to notify the sponsoring agency, the Department of Health and Human Services (HHS), of their interest in using the property for serving the homeless.<sup>11</sup> If HHS receives an expression of interest within the 60-day window, the property may not be made available for any other purpose until action on the request is complete. If no interest is expressed, then the property becomes available for other public benefit uses.<sup>12</sup>

## **Conveyance for Other Public Benefits**

In addition to being conveyed for homeless use, surplus property may be conveyed to state and local governments and qualified non-profits for one of the following eligible uses:

- corrections
- drug rehabilitation
- education
- emergency management response
- highways
- historic monuments
- housing
- law enforcement

---

<sup>7</sup> See 41 C.F.R. § 102-75.1275; 41 C.F.R. § 102-75.190-102-75.225; and 40 U.S.C. § 522. When an agency is required to pay fair market value for a property, the government does not realize any new revenue since the funds are being transferred from another federal agency.

<sup>8</sup> 40 U.S.C. § 102.

<sup>9</sup> 40 U.S.C. § 549.

<sup>10</sup> 42 U.S.C. 11411.

<sup>11</sup> 41 C.F.R. § 102-75.1200.

<sup>12</sup> Conveyances, other than McKinney Act transfers, are at the discretion of the agency and are not required by statute.

- parks and recreation
- public airports
- public health
- seaport facilities
- wildlife conservation

Each public benefit category has a federal agency, called a sponsor, that oversees conveyances for that purpose. Generally, sponsoring agencies have expertise in the policy areas they sponsor. The Federal Aviation Administration, for example, is the sponsoring agency for public airport conveyances.<sup>13</sup>

## Negotiated Sale

Surplus property that is not disposed of through the public benefit conveyance process may be sold to state and local governments at fair market value.<sup>14</sup> In essence, state and local governments are given the right of first refusal—they are allowed an opportunity to purchase surplus property before the property is offered for sale to the general public. Federal real property regulations permit negotiated sales when “a public benefit, which would not be realized from a competitive sale, will result from the negotiated sale.”<sup>15</sup> The regulations do not specify what types of activities would qualify, but GSA guidance notes that a state or local government can use property “according to its own redevelopment needs,” including economic development.<sup>16</sup>

## Public Sale

Surplus properties that are still available after screening for public benefit conveyance and negotiated sale may be offered for public sale. The property is advertised in local newspapers, regional or national publications, and the U.S. Real Estate Sales list, and may also be found on GSA’s website.<sup>17</sup> The appraised value of a property is used as a guideline for initial pricing, and properties are sold through sealed bids, physical auctions, and Internet auctions.<sup>18</sup>

## Obstacles to Timely Disposition

According to GAO, weaknesses in the disposition process have left the government with a large inventory of unneeded properties that cost hundreds of millions of dollars a year to operate.<sup>19</sup> In FY2009, the government held more than 10,000 excess buildings with total operating costs of

---

<sup>13</sup> 40 U.S.C. § 550. The agencies that sponsor conveyances are the Departments of Education (education), Health and Human Services (public health, homeless services), the Interior (parks and recreation, historic monuments, wildlife conservation), Justice (correctional), Transportation (port facility), Housing and Urban Development (housing), Justice (law enforcement), Homeland Security (emergency management response), and the Federal Aviation Authority (public airports).

<sup>14</sup> 41 C.F.R. § 102-75.880(d); 40 U.S.C. § 545.

<sup>15</sup> Ibid.

<sup>16</sup> U.S. General Services Administration, Office of Real Property Utilization and Disposal, “How to Acquire Federal Property,” at <https://extportal.pbs.gsa.gov/ResourceCenter/content/acquireFedProp.do>.

<sup>17</sup> U.S. General Services Administration, Office of Real Property Utilization and Disposal, Current Sales webpage, at <https://extportal.pbs.gsa.gov/ResourceCenter/PRHomePage/loadPRHomePage.do?type=full>.

<sup>18</sup> U.S. General Services Administration, *Customer Guide to Real Property Disposal*, p. 27.

<sup>19</sup> U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 4.

\$134 million.<sup>20</sup> Agencies have said that their efforts to dispose of unneeded properties are hindered by statutory disposal requirements, the cost of preparing properties for disposal, and conflicts with stakeholders. Each of these issues is discussed below.

## **Statutory Disposal Requirements**

The steps in the real property disposal process are set by statute, including the public benefit conveyance process. Agencies have noted that the need to offer properties to state and local governments, and non-profits, slows down the disposition process, thereby compelling agencies to incur operating costs for months—sometimes many months—while the properties are being screened. VA officials have said the requirements of the McKinney-Vento Act can add as much as two years to the disposal process.<sup>21</sup> Because public benefit conveyance requirements are set in law, agencies do not have the authority to skip screening, even for surplus properties that could not be conveyed anyway. The Department of Energy, for example, told auditors that they had properties that they felt could be disposed of only by demolition, due to their condition or location, but that still had to go through the screening process, thereby forcing DOE to pay maintenance costs that could have been avoided.

Statutes pertaining to environmental remediation or historic preservation also add time to the process. It may take agencies years of study to assess the potential environmental consequences of a proposed disposal, and to develop and implement an abatement plan, as required by law.<sup>22</sup> Similarly, the National Historic Preservation Act requires agencies to plan their disposal actions so as to minimize the harm they cause to historic properties, which may include additional procedures such as consulting with historic preservation groups at the state, local, and federal level.<sup>23</sup>

## **Disposal Costs**

Unneeded buildings are often among the older properties in an agency's portfolio. As a consequence, agencies sometimes find that they must complete expensive repairs and renovations before disposing of certain properties. Agencies may need to invest in repairs that will enable a building to meet health and safety standards, for example, or restore historic sites in accordance with federal standards. VA, for example, estimated that it would need to spend about \$3 billion to repair the buildings in its portfolio that it rated in "poor" or "critical" condition—56% of which were vacant or underutilized, and therefore might be candidates for disposal.<sup>24</sup> Agencies that wish to demolish vacant buildings face deconstruction and cleanup costs that, at times, exceed the cost of maintaining the property—at least in the short run—which may encourage real property managers to retain the property rather than dispose of it.<sup>25</sup> Federal agencies frequently cite the

---

<sup>20</sup> Federal Real Property Council, *FY2009 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, August 2009, p. 12.

<sup>21</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 39.

<sup>22</sup> U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 41.

<sup>23</sup> U.S. Government Accountability Office, *Federal Real Property: DHS Has Made Progress, but Additional Actions Are Needed to Address Real Property Management and Security Challenges*, GAO-07-658, June 2007, p. 42.

<sup>24</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 5.

<sup>25</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made Toward Addressing Problems, but*

cost of complying with environmental regulations as a major disincentive to disposal. Generally speaking, agencies are required to assess and pay for any environmental cleanup that may be needed before disposing of a property. Identifying and addressing environmental hazards, such as lead paint, asbestos, medical waste, and soil contamination, prior to disposition can result in “significant” up-front costs for agencies.<sup>26</sup>

## Stakeholder Conflict

Some agencies have found their disposal efforts complicated by the involvement of stakeholders with competing agendas. The Department of the Interior has said that it can be stymied by the competing concerns of local and state governments, historic preservation offices, and other political factors, when attempting to dispose of some of its unneeded real property.<sup>27</sup> Similarly, VA has found that communities sometimes oppose disposals that would result in new development, and veterans groups have opposed disposing of building space if that space would be used for purposes unrelated to the needs of veterans.<sup>28</sup> The Department of State has had difficulty in disposing of surplus real property overseas, due to disputes with host governments that restrict property sales.<sup>29</sup> These conflicts can result in delay, or even cancellation of proposed disposals, which, in turn, prevents agencies from reducing their inventories of unneeded properties.<sup>30</sup>

## Availability and Quality of Real Property Data

The Federal Real Property Profile (FRPP) is the government’s most comprehensive source of information about real property under the control of executive branch agencies. GSA manages the FRPP and is authorized to collect real property data from 24 of the largest landholding agencies each year (other agencies are encouraged, but not required, to report data to GSA).<sup>31</sup> The data elements that participating agencies collect and report are determined by the Federal Real Property Council (FRPC), an interagency taskforce which is funded and chaired by the Office of Management and Budget (OMB). The other members of the council are agency Senior Real Property Officers (SRPOs) and GSA.

---

*Underlying Obstacles Continue to Hamper Reform*, GAO-07-349, April 13, 2007, pp. 40-41.

<sup>26</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made Toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, GAO-07-349, April 13, 2007, p. 40.

<sup>27</sup> *Ibid.*, p. 16.

<sup>28</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 5.

<sup>29</sup> U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 40.

<sup>30</sup> There is no government-wide real property guidance for addressing stakeholder conflicts.

<sup>31</sup> Executive Order 13327, “Federal Real Property Asset Management,” 69 *Federal Register* 5897, February 4, 2004. According to the provisions of E.O. 13327, only the 24 agencies listed in 31 U.S.C. 901(b)(1) and (b)(2), which are subject to the Chief Financial Officers Act, are required to report real property data to GSA. Those agencies are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs; Environmental Protection Agency; General Services Administration; National Aeronautics and Space Administration; National Science Foundation; Nuclear Regulatory Commission; Office of Personnel Management; Small Business Administration; Social Security Administration; and United States Agency for International Development.

The FRPP contains data that could enhance congressional oversight of federal real property activities, such as the number of excess and surplus properties held by major landholding agencies, the annual costs of maintaining those properties, and agency disposition actions. GSA, however, maintains tight control over access to the FRPP, and does not permit direct access to the public and most federal employees, including congressional staff, on the grounds that the data are proprietary. GSA does consider requests for real property data from congressional offices, but GSA staff query the database and provide the results to the requestor.

Some FRPP data are made public through an annual summary report posted on GSA's website, but the summary reports are of limited use for several reasons.<sup>32</sup> Most of the data are highly aggregated (e.g., the number of assets disposed through public benefit conveyance government-wide), and very limited information is provided on an agency-by-agency basis. It is not possible, therefore, for Congress to monitor the performance of individual agencies through the summary reports. Basic questions, such as how many excess properties each agency disposed of in a given fiscal year, and by what method, cannot be answered. Nor is it possible to compare the performance of agencies, which in turn limits the ability of Congress to study the policies and practices at the most successful agencies and hold poorly performing agencies accountable.

Also, the quality of the FRPP data has been questioned. GAO audits have found, for example, that certain real property data were incomplete or were not comparable across agencies, which limited the usefulness of those data for decision making.<sup>33</sup> In addition, the reports may miscategorize important data on disposal methods. The three most recently published FRPPs identify "other" as the most common disposition method, accounting for 46% (16,028) of the total number of real property assets disposed by agencies in FY2007, nearly 73% (17,939) of those disposed in FY2008, and 41% (8,008) in FY2009.<sup>34</sup> Typically, the "other" data category is reserved for a relatively small number of cases that do not clearly fit into one of the major data categories, so it is unusual to see such a large number of "other" dispositions. In fact, the FRPP defines "other" disposals as those "that cannot be classified in any of the other disposition methods." The annual reports, however, do not explain why so many disposals cannot be classified as federal transfer, conveyance, sale, or demolition.<sup>35</sup> One explanation may be that agencies are misreporting their disposal data; another may be that some disposals are a combination of methods. If so, then the data reported for all types of dispositions may be of limited use, because thousands of properties may have been miscategorized.

The summary reports also omit data that Congress might find valuable. The FRPP contains, for example, the number of excess properties held by each agency and the annual operating costs of those properties—issues about which Congress has expressed ongoing interest—but the summary report only provides the number and annual operating costs of disposed assets, thereby providing the "good news" of future costs avoided through disposition while omitting the "bad news" of the

---

<sup>32</sup> The annual real property summary reports may be found on GSA's Federal Real Property Report Library website, at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_BASIC&contentId=23962](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=23962).

<sup>33</sup> U.S. Government Accountability Office, *Federal Real Property: An Update on High-Risk Issues*, GAO-09-801, July 15, 2009, p. 10.

<sup>34</sup> Federal Real Property Council, *FY2007 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, May 2008, p. 33. <sup>34</sup> Federal Real Property Council, *FY2008 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, August 2009, p. 24. Federal Real Property Council, *FY2009 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, September 2010, p. 18.

<sup>35</sup> Federal Real Property Council, *FY2008 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, August 2009, p. 24.

ongoing operating costs associated with unneeded properties the government maintained. Similarly, agencies estimate a dollar amount for the repair needs of their buildings and structures as part of their FRPP reporting, but the estimate is then folded into a formula for calculating a “condition index” for each building.<sup>36</sup> Given that repair needs are an obstacle to disposing of some properties, Congress may find it useful to have the repair estimates reported separately to help inform funding decisions.

## Select Real Property Proposals in the 112<sup>th</sup> Congress

### H.R. 1205: Federal Real Property Disposal Enhancement Act

H.R. 1205, the Federal Real Property Disposal Enhancement Act of 2011, was introduced by Representative Mike Quigley on March 17, 2011. The bill was referred to the House Committee on Oversight and Government Reform the same day. H.R. 1205 would require GSA to submit an annual report to Congress that included information on the number, market value, and deferred maintenance costs of all executive branch real property assets.<sup>37</sup> For surplus properties, the report would also have to include ongoing operating costs and, for surplus properties that have been disposed of, the report would provide the size, location, value, and method of disposal used. All of the data would be “set forth government-wide, and by agency, and for each at the constructed asset level and at the facility/installation level.”<sup>38</sup> This would appear to require reporting for individual buildings, parcels of land, and structures.

H.R. 1205 would provide new financial resources for agency disposal activities. The bill would allow agencies to retain the net proceeds from the disposition of real property, and to use those funds, as authorized by Congress, for real property activities, including the maintenance, repair, and disposal of other properties.<sup>39</sup> The bill would also give GSA the authority to pay for the costs of preparing properties held by other agencies for disposal, and then require agencies to reimburse GSA from the proceeds of the sale of the property.

The bill would establish a demonstration program that would exempt certain properties from the McKinney-Vento Act—primarily buildings and structures that, due to their condition or location, would not likely be approved for homeless use—so that they may be demolished without being delayed by homeless screening requirements.

H.R. 1205 includes several major provisions that would increase the real property data available to Congress, beyond those already discussed. It would require GSA to include in its annual report all of the same data for excess properties as for surplus properties—recurring and deferred maintenance costs, size and location, and value. It would also require GSA to report the amount

---

<sup>36</sup> U.S. General Services Administration, Office of Governmentwide Policy, *FY2008 Federal Real Property Report*, August 2009, p. 30.

<sup>37</sup> Deferred maintenance costs are generally considered to be the cost of repairs needed to bring a property to current standards.

<sup>38</sup> H.R. 1205 would require GSA to report the “replacement value” of properties, which is the cost of reconstructing identical facilities in the same location. S. 479 would require GSA to report the “market value” of properties, which is the amount a buyer would be willing to pay for the property. In a soft real estate market, the cost of replacing a property might exceed its market value; conversely, in a strong real estate market, the property may be sold for more than the cost of reconstructing existing facilities.

<sup>39</sup> The language specifies that net proceeds from the sale of reverted property that had been conveyed for a public benefit would be deposited into GSA’s real property account.

of proceeds obtained from the disposition of properties, and the amount of time and cost required to dispose of surplus and excess properties.

Section 7 of the bill would require GSA to establish a publicly accessible database with detailed information on all federal real property, other than properties excluded for reasons of national security. The database would be required to include the following for each property:

- location
- size (in square feet and acres)
- relevance to the agency's mission<sup>40</sup>
- utilization rate (underutilized or unutilized), and the number of days at that level of utilization
- status (excess or surplus)
- replacement value

H.R. 1205 would require that any net proceeds generated by the disposal of a property that are not used for paying the costs of disposal activities, maintenance, or repairs of an agency's real properties be used for deficit reduction. The bill would also mandate that by the end of FY2015 at least 50% of construction and demolition materials and debris be diverted from landfills for reuse.

Other provisions would require GSA to issue recommendations to executive agencies on how to identify excess property, how to evaluate the costs and benefits of disposition, how to prioritize disposal decisions, and how to best dispose of excess property. Executive agencies, for their part, would be required to ensure that they were identifying, reporting, and disposing of excess property as promptly as possible. Agencies would be further required to establish "goals and incentives" for reducing excess real property in their inventories.

## **H.R. 665: Excess Federal Building and Property Disposal Act<sup>41</sup>**

H.R. 665, the Excess Federal Buildings and Property Disposal Act of 2011, was introduced by Representative Jason Chaffetz, along with 29 cosponsors, on February 18, 2011. The bill was referred to the House Committee on Government Oversight and Reform, Subcommittee on Government Organization, Efficiency, and Financial Management the same day. H.R. 665 would establish a pilot program for the expedited disposal of unneeded real property. Responsibility for implementing the pilot program would be given to the OMB Director, who would be required to generate \$19 billion in proceeds from the disposal of unneeded real property over the nine-year life of the program (FY2012 through FY2020). The OMB Director would have the authority to establish the criteria by which "unneeded" properties would be identified. Agencies would recommend properties for disposal that meet the OMB Director's criteria, and the Director would select from the recommended properties the ones that would participate in the pilot program.

---

<sup>40</sup> This term may refer to "mission dependency," which is defined by the Federal Real Property Council as "the value an asset brings to the performance of the mission as determined by the governing agency." Data on mission dependency is collected by GSA and stored in the Federal Real Property Profile. Agencies rate each property they own as falling into one of three categories: "mission critical," which is defined as "without asset or parcel of land, mission is compromised"; "not mission dependent," which means the property does not affect the agency's mission; or "mission dependent, not critical," for properties that do not fit into the other two categories.

<sup>41</sup> The language in H.R. 665 is included in its entirety in Section 531 of the Spending Reduction Act of 2011 (S. 178). Senator Jim DeMint introduced S. 178 on January 25, 2011, and the bill was referred to the Senate Finance Committee the same day. No further action has been taken.

Agencies would be required to sell properties selected for the pilot program at fair market value. In order to reduce the time it takes to put properties up for sale, H.R. 665 would exempt properties in the pilot program from PBC requirements, including the McKinney-Vento requirements for homeless screening. Agencies that dispose of property in the pilot program would be reimbursed from the proceeds of the sale for the administrative expenses associated with the disposal. Of the net proceeds, 80% would be required to be deposited into the Treasury as miscellaneous receipts, and the remaining 20% would be deposited into the account of the agency that owned the property. Net proceeds would be available for other real property activities, including capital improvements as well as further disposals, without further appropriation until the pilot program has concluded.

## **H.R. 1734: Civilian Property Realignment Act**

H.R. 1734, the Civilian Property Realignment Act of 2011, was introduced by Representative Jeff Denham, along with 24 cosponsors, on May 4, 2011. The bill was referred to the House Committee on Transportation and Infrastructure the same day, and on May 5, 2011, it was referred to the Subcommittee on Economic Development, Public Buildings and Emergency Management. On May 24, 2011, Representative Denham offered an amendment in the nature of a substitute to H.R. 1734, which the subcommittee approved by voice vote the following day.

CPRA is perhaps the most comprehensive real property legislation introduced so far in the 112<sup>th</sup> Congress. Drawing on the Department of Defense base realignment and closure (BRAC) model, H.R. 1734 would establish a new, more centralized process for making decisions regarding the consolidation, reconfiguration, redevelopment, exchange, lease, sale, and conveyance of federal real property—actions collectively referred to as “realignment.” It would apply to all space owned and leased by executive branch agencies and government corporations, excluding military installations subject to BRAC legislation and properties excluded for reasons of national security.

The first step in the CPRA process would be for federal landholding agencies to develop recommendations for realigning their real property portfolios, and for reducing operating and maintenance costs. Agencies would submit their recommendations to the Administrator of the General Services Administration, who would, in consultation with the chairperson of the Federal Real Property Council, review and revise them, and then submit the revised recommendations to a newly established Civilian Property Realignment Commission.

The Commission would be composed of nine members, appointed by the President with the advice and consent of the Senate. It would hold public hearings, analyze the recommendations it received from the Administrator, and submit a final list of recommendations to the President. The President may submit the recommendations to Congress, take no action, or return the list to the Commission to make revisions. If the President takes no action, or does not submit a revised list of recommendations to Congress, then the realignment process ends for that fiscal year. If the President does submit recommendations to Congress, either in the original or revised form, a joint resolution of disapproval must be enacted within 45 days or the recommendations gain the force of law. Once recommendations became law, agencies would be required to begin implementing them within two years and complete them within six years.

CPRA would establish two accounts: a salaries and expenses account to fund the Commission’s administrative and personnel costs, and an Asset Proceeds and Space Management Fund (APSMF) which would be used to implement recommendations. Both accounts would receive funds from appropriations, but the APSMF would also receive the gross proceeds generated by the sale of properties pursuant to the Commission’s recommendations. The Commission would have the authority to transfer to agencies, with the consent of the GSA Administrator, amounts to

cover the costs associated with implementing the recommendations or other actions taken to realize operational efficiencies, and for outplacement assistance for employees whose employment would be terminated as the result of a disposal, consolidation, or other realignment action. From the amount of gross proceeds that remain after the Commission distributes funds—defined as net proceeds—60% would be deposited to the into the general fund in the Treasury. The OMB Director would distribute, on an annual basis, the remaining net proceeds among the APSMF and federal agencies for real property management activities.

CPRA properties would not be subject to existing PBC requirements, but the bill would establish an abbreviated conveyance process. Rather than subjecting all CPRA properties to screening for public use, the Commission would select certain properties for PBC screening. The Commission would post the list of selected properties on its website and send a copy of the list to the Secretary of the Department of Housing and Urban Development (HUD). The HUD Secretary would then have 30 days to determine whether any were suitable for homeless use. Simultaneously, non-profits and state or local governments interested in obtaining PBC properties for providing homeless services would need to submit a notice of interest to HUD within the same 30-day time limit. A non-profit, or state or local government interested in a property for a public benefit other than homeless use, would submit a notice of interest to the sponsoring agency, also within 30 days. If the recommendations gained force of law, HUD or the appropriate sponsoring agency would convey the property to the applicant it deems most meritorious.

CPRA would require executive agencies seeking to acquire leased space to do so only by working through GSA. It is not clear whether this would restrict GSA’s ability to delegate leasing authority to other agencies.

## Comparison of Certain Provisions

The three proposals discussed in the previous section—H.R. 1205, H.R. 665, and H.R. 1734—vary in their scope, authorities, and requirements, and so would have different consequences if enacted. **Table 1**, below, outlines how each proposal would address the four obstacles to expediting real property disposition discussed in this report: budgetary disincentives, administrative burden, stakeholder conflict, and lack of access to comprehensive, accurate data.

**Table 1. How Select Legislative Proposals Address Obstacles to Timely Disposition**

	H.R. 1205	H.R. 665	H.R. 1734
Budgetary Disincentives	Agencies may use all net proceeds from disposal for real property needs; unspent net proceeds used for deficit reduction	Agencies retain 20% of net proceeds from disposal	Gross proceeds go to Commission, but may be transferred to agencies to cover disposal costs
Administrative Burden	Properties in expedited demolition pilot program exempt from homeless use screening	Properties in expedited sale pilot program exempt from PBC screening requirements	Only select properties subject to abbreviated PBC screening requirements
Stakeholder Conflict	Does not address	Does not address	Establishes independent commission to recommend disposal actions

	H.R. 1205	H.R. 665	H.R. 1734
Data Quality and Access	Detailed data on all agency real property required in annual report; requires establishment of public real property database	Does not address	Commission holds public hearings, recommendations posted online and published in <i>Federal Register</i>

**Note:** PBC refers to Public Benefit Conveyance.

H.R. 1205 would potentially enhance the ability of agencies to dispose of unneeded properties by permitting them to retain the net proceeds from dispositions. Agencies would be permitted to use these funds to cover the costs associated with preparing properties for conveyance, sale, or demolition. By reinvesting in disposal, agencies could further reduce their inventories of unneeded properties and the costs associated with maintaining them. H.R. 1205 would also permit agencies to apply some or all of its net proceeds towards the repair and maintenance of buildings the agency intends to continue to utilize. While reinvesting proceeds in repairs and maintenance would reduce the amount of funds available for disposition, it also could generate cost-savings. Regular maintenance and repair of a building's core systems—such as electrical, heating, and air condition—tends to both extend the life of those systems and enable them to operate at a lower cost.<sup>42</sup> Similarly, failing to repair building components, such as roofs, can decrease the value of the building and lead to increased future repair costs, as prices increase or the problems worsen.<sup>43</sup>

The pilot program established by H.R. 1205 would potentially reduce the time it takes to dispose of buildings and structures scheduled for demolition. While the pilot program would only apply to that one category of disposition—it would not include properties to be disposed of by conveyance, transfer, or sale—it would still encompass thousands of unneeded properties. In FY2009, demolition was the most common method of disposition, accounting for 8,104 out of the 19,460 buildings and structures that were disposed of by the government that year. There is no public data that identifies the total number of federal buildings and structures scheduled for demolition, but some agencies have said they would like to demolish many more buildings than they do, so it is possible that thousands more real property assets would be eligible for the pilot program.<sup>44</sup> By speeding up the demolition process, agencies may be able to demolish more buildings and structures, and thereby eliminate the operating costs associated with those properties. It is not clear how much savings would result from the pilot program—in part because there is no comprehensive data on how long it takes properties to move through the PBC process or the annual operating costs of individual properties—but in FY2009, the annual operating costs of demolished properties totaled nearly \$82 million.

H.R. 1205 would address many of the concerns about the current lack of comprehensive real property data. The database required by H.R. 1205 could facilitate oversight, as it would allow users to identify unneeded and underutilized properties at each agency, calculate the operating costs of those properties, and monitor how long it takes for disposition to occur. The annual report required by H.R. 1205 would provide additional data that could enhance congressional oversight, including the market value and disposal costs of excess and surplus properties, and the amount of proceeds generated by the disposition of those properties. The bill would not, however, require GSA to take steps to improve the quality of the real property data it collects. As a consequence, the usefulness of the database as an oversight tool might be limited by the inaccuracy or

<sup>42</sup> U.S. Government Accountability Office, *Federal Real Property: Government's Exposure from Repair and Maintenance Backlogs Is Unclear*, GAO-09-10, October 2008, pp. 4-6.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid., p. 18.

incompleteness of the data. In addition, it is possible that GSA might object to the inclusion of each property's estimated market value in the report—which it considers confidential—or to the administrative costs associated with additional reporting requirements.

Unlike H.R. 1205, H.R. 665 would permit agencies to retain 20%, rather than all, of the net proceeds generated by disposition. Using FY2009 net proceeds data, H.R. 665 would have provided agencies \$40 million less than H.R. 1205 for reinvestment in their real property portfolios. The expedited disposal program proposed in H.R. 665 would potentially reduce the administrative burden associated with disposing of most unneeded properties by exempting them from all public benefit conveyance requirements. Opposition to the pilot program may arise among state and local government agencies and non-profit organizations that would prefer to have access to surplus federal property through public conveyance—which would give them the opportunity to obtain the property at a discounted price—and particularly among those agencies and non-profits that serve the homeless, because they had been given special consideration under McKinney-Vento. These exemptions could cut months from the disposal process for many properties, however, thereby reducing maintenance costs and providing the government with the opportunity to realize revenues from the sale of properties sooner. Moreover, some state and local governments, and private firms, might support the pilot program, because it would increase the number of federal properties that could be purchased and therefore be used for a wider range of purposes, including economic development, than if the property had been conveyed. The bill would not impose any new reporting requirements.

H.R. 1734 would transfer all proceeds to the Commission, which some agencies may find objectionable, preferring instead to have funds generated by their disposal activities to be deposited into their own accounts. By breaking the link between disposal and proceeds, the bill may reduce the incentive of some agencies to dispose of their unneeded properties as promptly as possible. H.R. 1734 would reduce administrative burden associated with the conveyance process by requiring only some properties to go through the screening, and by truncating the conveyance process for those properties that are subject to it. Stakeholder conflict may be reduced by establishing an independent apparatus for making real property disposal decisions, similar to the process by which the Department of Defense disposes of property under the Base Realignment Closure Act. H.R. 1734 may facilitate cost savings by making recommendations regarding consolidation, which the other bills do not. The CPRA process is intended to be an effective way to make decisions about consolidation. The Commission would be able to look at agency space needs across the government when making recommendations and may see a broader range of opportunities for agencies to share space than real property staff within an individual agency. While the bill would require the Commission to hold public hearings and publish its recommendations online, Congress may not be provided with much useful data. There is no requirement for agencies or the Commission to make public data on properties that do not make it into the recommendations. Nor will agencies or the Commission be required to provide data on the operating costs, market value, or even total number of excess and surplus properties. The bill may facilitate oversight of leasing decisions, by requiring all agencies to work through GSA rather than use independent authority.

## **Enhanced Use Leases**

It may not be possible for agencies to sell some unneeded properties, particularly when the real estate market is slow. Congress may therefore wish to consider whether to expand the authority of agencies to enter into Enhanced Use Leases (EULs). In broad terms, EULs are special authorities that permit agencies to enter into short- or long-term lease agreements with public and private entities for the use of federal property. VA has an EUL in New Jersey, for example, that has turned

an underutilized property into an industrial park, and it leases unneeded space in Los Angeles on a short-term basis to the film industry.<sup>45</sup> Because EULs are typically provided to individual agencies, the scope of the authority they grant varies widely. Many agencies can retain the proceeds generated by EULs, for example, but others cannot.<sup>46</sup> Similarly, some agencies may use EUL proceeds for activities unrelated to real property, while others may apply them only to real property functions.<sup>47</sup> While EULs may provide revenue to agencies they may not otherwise realize, some agencies find the process of drafting, negotiating, and implementing an EUL agreement to be time consuming and complicated.<sup>48</sup> If Congress does consider expanding EUL authorities, among the issues it might choose to examine are whether to require congressional approval before EUL proceeds may be used by an agency, and whether to limit the use of proceeds to certain purposes (e.g., only disposal, any real property activity, any agency activity).

## Author Information

Garrett Hatch  
Analyst in American National Government

---

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

---

<sup>45</sup> Government Accountability Office, *VA Real Property: VA Emphasizes Enhanced-Use Leases to Manage Its Real Property Portfolio*, GAO-09-776, June 2009, p. 3.

<sup>46</sup> Government Accountability Office, *Federal Real Property: Authorities and Actions Regarding Enhanced Use Leases and Sale of Unneeded Real Property*, GAO-09-283, February 17, 2009, p. 5.

<sup>47</sup> *Ibid.*, pp. 14-15.

<sup>48</sup> Government Accountability Office, *VA Real Property: VA Emphasizes Enhanced-Use Leases to Manage Its Real Property Portfolio*, GAO-09-776, June 2009, pp. 5-6.